

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1542 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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NAROTTAM DAMODARDAS CHARADVA

Versus

STATE OF GUJARAT

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Appearance:

MR YOGESH S LAKHANI for Petitioner

MR SP DAVE ADDL PUBLIC PROSECUTOR for Respondent No. 1

MR HJ NANAVATI for Respondent No. 2

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 15/07/1999

ORAL JUDGEMENT

#. Heard Mr.Gondalia, learned advocate for Mr.Lakhani,  
learned advocate appearing for the petitioner,  
Mr.Nanavati for respondent No.2 and Mr.Dave, learned APP  
for respondent NO.1.

#. Rule. Mr.Nanavati and Mr.Dave waive service of

Rule.

#. The petitioner herein had issued a cheque to respondent NO.2 for Rs.17,000/- on 15-10-1991 drawn on Junagadh District Co-operative Bank, Marketing Yard, Junagadh. The said cheque was deposited on 23rd November, 1991 which was dishonored by the Bank with an endorsement of insufficient fund. The respondent therefore, issued a notice to the petitioner under Section 138 of Negotiable Instruments Act. Thereafter, the said cheque was again deposited on 25th march, 1992 and it was returned with an endorsement of insufficiency of funds, pursuant to which, a notice again came to be issued as envisaged under Section 138 of the Negotiable Instruments Act on 8-4-1992, which was received by the petitioner on 20th April, 1992 and because he did not respond to the notice, respondent No.2 lodged a complaint in question on 8-5-1992.

#. With the above undisputed facts in the backdrop, the main and only argument advanced by the petitioner is that the cause of action arose on bouncing of cheque and issuance of notice thereafter and therefore, the complaint is time barred. The second deposit and second issuance of the notice cannot extend period of limitation. In support of this argument, the reliance is placed on a decision of the Hon'ble Apex Court in the case of SUDANANDAN BHADRAN VS. MADHUWAN SUNILKUMAR 1998 (2) GLH 837 (Head Note "C").

#. Mr. Nanavati has opposed this petition mainly on the ground that the conduct of the petitioner is unfair to the complaint. He, instead of preferring this petition, the petitioner could have raised this objection before the learned JMFC and if the learned JMFC, ultimately does not accept this legal proposition, then, the petitioner could have come here.

#. Barring this, respondent No.2 is not able to meet with legal proposition advanced by the petitioner.

#. Instead of entering into the technicalities of asking the petitioner to go to the Magistrate and to raise this objection, when the petitioner is before this Court and has raised this legal plea, benefit of which he is entitled to, this appears to be a fit case where, the petition deserves to be entertained.

#. It is categorically held by the Hon'ble Apex Court in the case of SADANANDA BHADRAN (Supra) that the provisions contained in Sections 138 and 142 can be

harmonized with the interpretation that on each presentation of the cheque and its dishonour, a fresh right and no cause of action accrues in favour of the complainant. This being so, the present complaint is time barred and not entertainable. Under these circumstances, the petition deserves to be allowed. The complaint and the order passed by the learned Magistrate, Keshod are hereby quashed and set aside. However, it is clarified that this order may not be taken to take away the right of respondent No.2 for recovery of the amount in accordance with law. Rule is made absolute.

Date : 15-7-1999 [ A.L.Dave, J. ]

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